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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re United States Patent Application of:)	Docket No.:	4115-178
Applicants:)	Conf. No.:	4972
Application No.:)	Art Unit:	1616
Date Filed:)	Examiner:	Unassigned
Title:)	Customer No.:	23448
RECOMBINANT DOUBLE- STRANDED RNA PHAGES AND USES THEREOF)		

FACSIMILE TRANSMISSION CERTIFICATE

I hereby certify that I am filing this document in the U.S. Patent and Trademark Office on February 13, 2006, addressed to Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 and transmitted via facsimile on February 13, 2006, to United States Patent and Trademark Office facsimile transmission number (571) 273-8300.


Steven J. Hultquist

No. of Pages: 6

REQUEST FOR WITHDRAWAL OF JANUARY 12, 2006 NOTIFICATION OF
DEFECTIVE RESPONSE IN U.S. PATENT APPLICATION NO. 10/525,702, BASED ON
COMPLIANCE WITH THE REQUIREMENTS OF 37 CFR 1.821-1.825 BY THE
APPLICATION AS PRESENTLY CONSTITUTED

Mail Stop PCT
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

Request is hereby made for the withdrawal of the Notification of Defective Response dated January 12, 2006 in the above-identified U.S. patent application, based on the fact that the application as presently constituted is fully in compliance with the requirements of 37 CFR 1.821-1.825.

4115-178

The January 12, 2006 Notice states, *inter alia*, that "[T]his application clearly fails to comply with the requirements of 37 CFR 1.821-1.825," as lacking a computer readable form of a sequence listing.

The Office, however, has misapplied the provisions of 37 CFR 1.821-1.825 as well as the appertaining MPEP provisions in requiring a CRF and written sequence listing, since **no CRF or written sequence listing is required under 37 CFR 1.821-1.825 or MPEP 2422.03** ("The Requirements for a Sequence Listing and Sequence Identifiers; Sequences Embedded in Application Text; Variants of a Presented Sequence").

As stated in MPEP 2422.03,

"The requirement for compliance in 37 CFR 1.821(c) is directed to "disclosures of nucleotide and/or amino acid sequences." (Emphasis added.) All sequence information, whether claimed or not, that meets the length thresholds in 37 CFR 1.821(c) is subject to the rules. The goal of the Office is to build a comprehensive database that can be used for, *inter alia*, the purpose of assessing the prior art. It is therefore essential that all sequence information, whether only disclosed or also claimed, be included in the database. **In those instances in which prior art sequences are only referred to in a given application by name and a publication or accession reference, they need not be included as part of the "Sequence Listing," unless an examiner considers the referred to sequence to be "essential material," per MPEP §608.01(p).** However, if the applicant presents the sequence as a string of particular bases or amino acids, it is necessary to include the sequence in the "Sequence Listing," regardless of whether the applicant considers the sequence to be prior art. **In general, any sequence that is disclosed and/or claimed as a sequence, i.e., as a string of particular bases or amino acids**, and that otherwise meets the criteria of 37 CFR 1.821(a), must be set forth in the "Sequence Listing."

(Emphasis added; MPEP 2422.03)

The foregoing is clear as to the requirements applicable to the present application.

4115-178

Applicant has not disclosed or claimed any sequence within the criteria of 37 CFR 1.821 as a string of particular bases or amino acids (NOTE: the mention in the present application at page 5, lines 35-36 of "the methionine codon AUG" is specifically excluded by 37 CFR § 1.821)¹.

It is clear from the language of MPEP 2422.03 that a sequence must be set forth as a string of particular bases or amino acids to warrant the requirement of a sequence listing, or must otherwise constitute "prior art sequences ... referred to in a given application by name and a publication or accession reference, [that] an examiner considers ... to be 'essential material,' per MPEP §608.01(p)."

In the present application, neither criterion is applicable, since there are no strings of particular bases or amino acids set out in the disclosure within the scope of 37 CFR 1.821 and the Notice is devoid of any indication that any "prior art sequences ... referred to ... by name and a publication or accession reference" in the present application have been designated as "essential material" under the provisions of MPEP §608.01(p).

Accordingly, it is respectfully requested that the Notification of Defective Response be withdrawn, since the Notification is improper under the applicable Code of Federal Regulations and MPEP provisions, and it is respectfully requested that the application now be submitted to examination on the merits.

Respectfully submitted,



Steven J. Hultquist
Reg. No. 28,021
Attorney for Applicant

¹ 37 CFR § 1.821 ("Nucleotide and/or amino acid sequence disclosures in patent applications") provides in paragraph (a) of such regulation that "[N]ucleotide and/or amino acid sequences as used in §§ 1.821 through 1.825 are interpreted to mean an unbranched sequence of four or more amino acids or an unbranched sequence of ten or more nucleotides...[S]equences with fewer than four specifically defined nucleotides or amino acids are specifically excluded from this section." 37 CFR § 1.821(a)

4115-178

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Enclosures:
Copy of Notification of Defective Response

The USPTO is hereby authorized to charge any deficiency or credit any overpayment of fees properly payable for this document to Deposit Account No. 08-3284



UNITED STATES PATENT AND TRADEMARK OFFICE

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U.S. APPLICATION NUMBER NO.	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
10/525,702	David Hone	4115-178
INTERNATIONAL APPLICATION NO.		
PCT/US03/26200		
I.A. FILING DATE	PRIORITY DATE	
08/20/2003	08/20/2002	

23448

INTELLECTUAL PROPERTY / TECHNOLOGY LAW
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RESEARCH TRIANGLE PARK, NC 27709

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JAN 16 2006

IPTL

CONFIRMATION NO. 4972

371 FORMALITIES LETTER

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Date Mailed: 01/12/2006

✓ Resp Doc
2/12/06

NOTIFICATION OF DEFECTIVE RESPONSE

The following items have been submitted by the applicant or the IB to the United States Patent and Trademark Office as a Designated / Elected Office (37 CFR 1.495)

- Indication of Small Entity Status
- Priority Document
- Copy of the International Application filed on 02/18/2005
- Copy of the International Search Report filed on 02/18/2005
- Preliminary Amendments filed on 02/18/2005
- Information Disclosure Statements filed on 09/21/2005
- Oath or Declaration filed on 12/20/2005
- Small Entity Statement filed on 02/18/2005
- U.S. Basic National Fees filed on 02/18/2005
- Priority Documents filed on 02/18/2005

Applicant's response filed 12/20/2005 is hereby acknowledged. The following requirements set forth in the NOTIFICATION of MISSING REQUIREMENTS mailed 08/04/2005 have not been completed.

- This application clearly fails to comply with the requirements of 37 CFR. 1.821-1.825. Applicant's attention is directed to the final rulemaking notice published at 55 FR 18230 (May 1, 1990), and 1114 OG 29 (May 15, 1990). If the effective filing date is on or after July 1, 1998, see the final rulemaking notice published at 63 FR 29620 (June 1, 1998) and 1211 OG 82 (June 23, 1998). If the effective filing date is on or after September 8, 2000, see the final rulemaking notice published in the Federal Register at 65 FR 54604 (September 8, 2000) and 1238 OG 145 (September 19, 2000). Applicant must provide an initial computer readable form (CRF) copy of the "Sequence Listing", an initial paper or compact disc copy of the "Sequence Listing", as well as an amendment specifically directing its entry into the application. Applicant must also provide a statement that the content of the sequence listing information recorded in computer readable form is identical to the written (on paper or compact disc) sequence listing and, where applicable, includes no new matter, as required by 37 CFR 1.821(e), 1.821(f), 1.821(g), 1.825(b), or 1.825 (d). If applicant desires the sequence listing in the instant application to be identical with that of another application on file in the U.S. Patent and Trademark Office, such request in accordance with 37 CFR 1.821 (e) may be submitted in lieu of a new CRF.
- A copy of the "Sequence Listing" in computer readable form has not been submitted as required by 37

CFR 1.821(e). If the effective filing date is on or after September 8, 2000, see the final rulemaking notice published in the Federal Register at 65 FR 54604 (September 8, 2000) and 1238 OG 145 (September 19, 2000). Applicant must provide an initial computer readable form (CRF) copy of the "Sequence Listing" and a statement that the content of the sequence listing information recorded in computer readable form is identical to the written (on paper or compact disc) sequence listing and, where applicable, includes no new matter, as required by 37 CFR 1.821(e), 1.821(f), 1.821(g), 1.825(b), or 1.825(d). If applicant desires the sequence listing in the instant application to be identical with that of another application on file in the U.S. Patent and Trademark Office, such request in accordance with 37 CFR 1.821(e) may be submitted in lieu of a new CRF.

Applicant is required to complete the response within a time limit of ONE MONTH from the date of this Notification or within the time remaining in the response set forth in the Notification of Missing Requirements, whichever is the longer. No extension of this time limit may be granted under 37 CFR 1.136, but the period for response set in the Notification of Missing Requirements may be extended under 37 CFR 1.136(a).

Applicant is cautioned that correction of the above items may cause the specification and drawings page count to exceed 100 pages. If the specification and drawings exceed 100 pages, applicant will need to submit the required application size fee.

For questions regarding compliance to 37 CFR 1.821-1.825 requirements, please contact:

- For Rules Interpretation, call (571) 272-0951
- For Patentin Software Program Help, call Patent EBC at 1-866-217-9197 or directly at 703-305-3028 / 703-308-6845 between the hours of 6 a.m. and 12 midnight, Monday through Friday, EST.
- Send e-mail correspondence for Patentin Software Program Help @ ebc@uspto.gov

Applicant is reminded that any communications to the United States Patent and Trademark Office must be mailed to the address given in the heading and include the U.S. application no. shown above (37 CFR 1.5)

*A copy of this notice **MUST** be returned with the response.*

VONDA M WALLACE

Telephone: (703) 308-9140 EXT 225

PART 1 - ATTORNEY/APPLICANT COPY

U.S. APPLICATION NUMBER NO.	INTERNATIONAL APPLICATION NO.	ATTY. DOCKET NO.
10/525,702	PCT/US03/26200	4115-178

FORM PCT/DO/EO/916 (371 Formalities Notice)

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